

Attorney Docket No.: F7708(V)
Serial No.: 10/559,587
Filed: December 2, 2005
Confirmation No.: 2710

REMARKS

Applicants thank the Examiner for providing guidance in a telephone interview held on February 5, 2009 on how to amend the claims and specification to recite subject matter that was disclosed in the original drawings with reasonable clarity but was not recited in the original written description.

Applicants have amended the specification and claims as suggested by the Examiner. The drawings (FIG 1-3) referred to below are the drawings as amended previously in applicants' September 25, 2008 response, and were made in order to label features that were disclosed in the original drawings so that they could be recited in the amended specification and claims.

Amendment to the Specification

The specification has been amended to state that the lid (4) shown in FIG 1 is a "separate" lid (separate from the kettle body) which is comprised of two parts (8, 8') connected by a hinge (5).

Amendment to the claims

Claim 1 has been amended without prejudice to more clearly describe features disclosed in the original drawings and specifically labeled in the amended drawings.

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Amended claim 1 specifies that:

- the kettle assembly has a separate lid (labeled item 4 in original and amended **FIG 1**);

- the cylindrical inner container has a vertical separating plate (labeled item 13 in amended **FIG 1 and FIG 3**) such that two compartments are formed as is disclosed in the original written specification on page 4, lines 15-16, original claim 1 and **FIG 3**);

- the separate lid has two parts (labeled 8, 8' in amended **FIG 1**) connected by a hinge (labeled 5 in original and amended **FIG 1**).

Claim Rejections – 35 USC § 112

Claims 1 and 3-10 were rejected under 35 USC § 112, first paragraph as failing to comply with the written description paragraph. Applicants respectfully request that this rejection be reconsidered in light of the above amendments, which closely follow suggestions made by the Examiner during a telephone interview, and further in view of the following remarks.

Claim 1 specifies that the cylindrical inner container fits inside the said cylindrical outer container. The Examiner asserted that there is no support for this limitation. Applicants respectfully point out that this limitation is in fact disclosed on page 4, lines 13-14 of the original written description (“... a cylindrical inner container (2) which fits inside said outer container”).

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Claim 1 has been amended to replace the phrase “a vertical separating plate separating the inner cylindrical container into two compartments” by the phrase “a vertical separating plate such that two compartments are formed”. The latter phrase is taken from the original specification at page 4, lines 15-16, and FIG 1 and FIG 3 and original claim 1.

Claim 1 has been amended to replace the phrase “wherein the lid is not hingeably attached to the kettle part and wherein the lid comprises a hinge dividing the lid into two parts” by the phrase “wherein the separate lid has two parts connected by a hinge”. Applicants believe the Examiner agreed that support for this limitation is adequately provided in original drawings even though the words are not specifically stated in the written description. In particular, **FIG 1** clearly discloses that the lid (4) is *separate* from the kettle part (which comprises parts 1 and 2) and that the lid (4) has two parts (labeled 8,8' in amended **FIG 1**) connected by a hinge (5).

Claim Rejections – 35 USC § 103

Claims 1 and 3-10 were rejected under 35 USC §103(a) as being unpatentable over either one of EP 063 822A ('822) or WO 00/49924 ('924). Applicants respectfully request the Examiner to reconsider this rejection in light of the above amendments and following remarks.

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Relevant facts

'822 discloses an "Electrical cooking apparatus comprising a casing (10) of cylindrical pan shape, a heating resistance (12) disposed in a horizontal plane near the bottom of said pan, means for controlling the current supply to said resistance (12), a removable pot (14) which fits into said pan and which may take a first or so-called cooking position in which the bottom (16) of said pot (14) is in thermal contact with said resistance (12), and comprising means for supporting the pot (14) and intended to support said pot (14) within said pan in a second or so-called upper position, characterized in that in said upper position the bottom (16) of the pot (14) is remote from the resistance (12)" (abstract and Figures).

'924 discloses "a food cooking pot provided with an internal dividing wall and lid split into two halves each one of them attached to the brim by means of hinges allowing each half to be opened and closed independently" (abstract and Fig 1).

Applicants Arguments

To qualify as a 103(a) reference "The prior art reference, or combination of references, must teach or suggest all of the claim limitations (MPEP §2143). In addition to providing at least a suggestion of all the claim limitations, both the suggestion and the reasonable expectation of success must be found in the prior art references, not in Appellant's disclosure" (See *In re Vaeck*, 20 U.S.PQ.2d 1438, 947 F.2d 448 (Fed Cir. 1991))

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Applicants respectfully submit that neither '822 nor '924 teaches or suggests a kettle assembly having all the claim limitations and features recited in applicants' claim 1.

Regarding '822

The following elements recited in applicants' claims are not taught or suggested either explicitly or implicitly in '822.

- A separate lid which has two parts connected by a hinge (claim 1). '822 is silent regarding any lid, let alone a lid comprised of two parts connected by a hinge as disclosed in applicants' FIG 1.

- A cylindrical inner container having a vertical separating plate such that two compartments are formed (claim 1).

- A gap between the cylindrical inner container and the cylindrical outer container said gap filled with water which is kept a predetermined temperature (claim 9). In the apparatus disclosed in '822 the inner pot is in direct contact with a thermal resistive heater, i.e., there is no gap which is filled with water.

- A lid that includes three handles, wherein one handle is located on each of the two lid part and one handle is located over the hinge (claim 10).

- A cylindrical inner container that includes a central member positioned above the vertical separating plate, said central member separated from the vertical separating plate by a gap (claim 11).

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Absent disclosure of the above elements either explicitly or implicitly, '822 can not present a *prima facie* case of obviousness over claims 1 and 3-10.

Regarding '924

The following elements recited in applicants claims are not taught or suggested either explicitly or implicitly in '924.

- A kettle part comprising a cylindrical outer container and a cylindrical inner container which fits inside said cylindrical outer container (claim 1). '922 discloses a cooking pot having only one container.

- A separate lid comprising two parts connected by a hinge (claim 1). '924 teaches a pot in which the lid is not a separate entity. The lid taught in '922 consists of two parts 7 ('922 essentially discloses a container with two lids) which are each connected to the pot by hinges 8 but are not directly connected to each other by a hinge (compare FIG 1 of '924 with applicants FIG 1). Thus, the lid taught in '922 is not a separate entity and the two parts are connected by 2 hinges and a pot.

- A gap between the cylindrical inner container and the cylindrical outer container that is filled with water which is kept a predetermined temperature (claim 9). '924 teaches only one container.

- A lid that includes three handles, wherein one handle is located on each of the two lid parts and one handle is located over the hinge (claim 10). '924 does not have a hinge which directly connects the two parts of the lid.

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- A cylindrical inner container that includes a central member positioned above the vertical separating plate, said central member separated from the vertical separating plate by a gap (claim 11).

Absent disclosure of the above elements either explicitly or implicitly, '924 can not present a *prima facie* case of obviousness over claims 1 and 3-10..

Nor are applicants' claims obvious from a combination '822 and '924. '822 is directed to a two part electric cooking apparatus which incorporates a positioning mechanism to allow the temporary removal of the inner cooking chamber from direct contact with a resistance heater located at the bottom of the outer chamber. '942 is directed to a cooking pot which allow the simultaneous cooking of two different foods in the same pot by having side by side compartments each with a hinged lid.

The Examiner asserted that "It clearly would have been an obvious matter of design choice to have modified either one of EP 0 63 822 or WO/ 00/49924 in order to provide the simultaneous delivery of more than one type of soup at a constant and elevated temperature and in a restricted space."

Applicants submit that the Examiner has used the knowledge gained from applicants' disclosure as a blueprint in an attempt to reconstruct their claimed invention from isolated pieces of prior art. This approach contravenes the statutory mandate of §103 which requires judging obviousness at the point in time when the invention was made. *Grain Processing v. American Maize-Prods. Co.*, 840 F.2d 902, 907 (Fed. Cir. 1988).

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Neither EP 0 63 822 nor WO/ 00/49924 mentions anything about the simultaneous delivery of more than one type of soup at a constant and elevated temperature and in a restricted space; a problem specifically addressed in applicants disclosure. Applicants respectfully point out that it is precisely the recognition of this problem which motivated their design choices leading to a kettle assembly which incorporated the particular combination of inventive features recited in their claims.

Furthermore, even in the unlikely event that EP 0 63 822 or WO/ 00/49924 were combined, the combination would not disclose all the elements recited in applicants' claimed invention. Specifically, the combination of references does not teach or suggest either explicitly or implicitly the following elements of applicants' kettle assembly,

- A separate lid which has two parts connected by a hinge (claim 1).
- A cylindrical inner container having a vertical separating plate such that two compartments are formed (claim 1).
- A gap between the cylindrical inner container and the cylindrical outer container said gap filled with water which is kept a predetermined temperature (claim 9).
- A separate lid which has two parts connected by a hinge that further includes three handles, wherein one handle is located on each of the two lid part and one handle is located over the hinge (claim 10).

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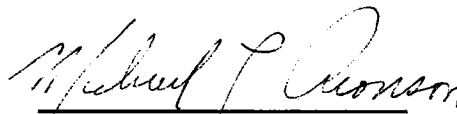
- A cylindrical inner container that includes a central member positioned above the vertical separating plate, said central member separated from the vertical separating plate by a gap (claim 11).

Absent disclosure of the above elements either explicitly or implicitly, '822 and '924 can not present a *prima facie* case of obviousness over claims 1 and 3-10.

In view of the foregoing amendments and remarks, applicants respectfully request that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned agent invites the Examiner to telephone at the number provided.

Respectfully submitted,

A handwritten signature in cursive script, reading "Michael P. Aronson".

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